

## **Explanatory Memorandum to the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 6) Regulations 2020**

This Explanatory Memorandum has been prepared by the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) (No. 6) Regulations 2020.

**Vaughan Gething**  
**Minister for Health and Social Services**

21 August 2020

## **1. Description**

These Regulations amend the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 (“the principal Regulations”).

## **2. Matters of special interest to the Legislation, Justice and Constitution Committee**

These Regulations are made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c. 22) (“the 1984 Act”). The Regulations are made without a draft having been laid and approved by the Senedd. It is the opinion of the Welsh Ministers that, by reason of urgency, it is necessary to make the Regulations without a draft being so laid and approved so that public health measures can be taken in order to quickly respond to the threat to human health from coronavirus. In particular, the restrictions contained in the principal Regulations should be relaxed as soon as they are no longer considered necessary or proportionate to retain them in their existing form.

The Regulations cease to have effect at the end of the period of 28 days (excluding recess) beginning with the day on which the instrument is made unless, during that period, the Regulations are approved by the Senedd.

### European Convention on Human Rights

Whilst the Regulations engage individual rights under the Human Rights Act 1998 and the European Charter of Fundamental Rights, the Government considers that they are justified for the purpose of preventing the spreading of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health and are proportionate.

Each of these are qualified rights, which permit the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health and are proportionate. The continued adaption of the requirements made under the principal Regulations by these Regulations, is a proportionate response. These provisions balance the need to maintain an appropriate response to the threat posed by coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to avoid an increase to the rate of transmission of coronavirus, taking into account the scientific evidence.

The amendments made by these Regulations are a relaxation of restrictions that have a particular impact on the Article 8 right to respect for private and family life and the Article 11 right to freedom of assembly and association. As the public health risk posed by coronavirus is currently somewhat reduced given the recently decreasing prevalence of the virus in Wales, the Welsh Ministers consider it proportionate to respond to the current level of threat by loosening certain restrictions (in particular restrictions on the number of households that may be treated as a single extended household and consequently can meet indoors, and by introducing a mechanism for

approving certain outdoor events of up to 100 people). In arriving at that conclusion the Welsh Ministers had regard to the interference with those fundamental human rights and sought to balance that interference proportionately with the need to protect the public from the threat posed by coronavirus – a need which in of itself relates to the Article 2 right to life.

### **3. Legislative background**

The Regulations are made under sections 45C(1) and (3)(c), 45F(2) and 45P of the 1984 Act.

The Explanatory Memorandum to the principal Regulations provides further information on these powers.

### **4. Purpose and intended effect of the legislation**

The principal Regulations were made in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

#### *Extended households*

Since 6 July two separate households in Wales have been able to join together to form one extended household. This allows people in those households to be treated as if they were a single households under the principal Regulations and therefore have the same legal freedoms people living in individual households currently have – such as being able to meet indoors, have physical contact, go places together and stay in each other’s homes.

The amendments made by these Regulations will allow up to four households to join together in an extended household. This might take the form of two existing extended households joining together, or for households not already in an extended household arrangement to form one (or join an existing extended household).

#### *Gathering indoors*

The amendments made by these Regulations will allow people to gather indoors for a small wedding reception, funeral tea or wake associated with a marriage or civil partnership ceremony or funeral that takes place on or after 22 August 2020. The purpose is to allow these significant life events to be marked. The intention is that guidance will specify how these gatherings can be conducted safely.

#### *Gathering outdoors*

The amendment to the principal Regulations will allow for a pilot of a small number of events for up to 100 spectators with express agreement of the Welsh Ministers to take place.

Whilst the Government is not yet moving to allow outdoor events generally, by taking these steps an opportunity will be provided to learn from and reflect on how mitigations can work effectively.

This approach provides flexibility for the events to be amended should difficulties arise with those identified, and should additional pilot activity be identified Ministers could agree to it without requiring further amendments to the Regulations

These Regulations also amend regulation 18(9B) of the principal Regulations to make clear that information and answers given under regulation 18(7A) are not admissible in any proceedings other than proceedings under the principal Regulations. This responds to a technical scrutiny point raised by the Legislation, Justice & Constitution Committee in their draft report on amendments made by the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amending) (No. 4) Regulation 2020.

The Regulations come into force at the beginning of Saturday, 22 August 2020.

It is critical to take all reasonable steps to limit the onward transmission of coronavirus. Coronavirus was declared a Public Health Emergency of International Concern on 30 January 2020 by the World Health Organisation, and steps are being taken worldwide to limit its transmission. The Chief Medical Officer for Wales together with the other Chief Medical Officers across the UK continue to assess the risks to public health stemming from coronavirus to be high.

The Welsh Ministers consider that easing and adapting the restrictions by means of the amendments made to the principal Regulations are proportionate to what the principal Regulations seek to achieve, which is to respond to a serious and imminent threat to public health.

## **5. Consultation**

Given the serious and imminent threat arising from coronavirus and the need for an urgent public health response, including the need to lift any restrictions which are no longer considered proportionate to that response, there has been no public consultation in relation to these Regulations.

More widely, individuals and businesses have been informed about the restrictions through wide scale and ongoing public information broadcasts across the UK, including by the Chief Medical Officer for Wales, the First Minister of Wales and the Prime Minister.

The First Minister, together with other Ministers and the Welsh Government, has continued to update individuals and businesses throughout subsequent changes to the Regulations. The First Minister signalled in his press conference of 14 August the intention to bring about the changes achieved in the Regulations made today, if circumstances allowed for it. These proposed changes were subsequently widely reported. The First Minister confirmed these changes would be made in his press conference of 21 August.

## **6. Regulatory and other impact assessments**

A regulatory impact assessment has not been prepared in relation to these Regulations due to the need to put them in place urgently as part of the ongoing response to a serious and imminent threat to public health

A summary equalities impact assessment has been prepared and will be published<sup>1</sup>. In summary, these Regulations should have a positive impact on equality given that they allow for greater numbers of people to gather together in various circumstances, which is important for the wellbeing of many different categories of people who have found the period of lockdown difficult.

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<sup>1</sup> To be available at: <https://gov.wales/equality-impact-assessments-coronavirus>